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SUBJECT: PANAMA: PLANS FOR NORMALIZATION FOR COLOMBIANS
UNDER PROTECTED STATUS

REF: PANAMA 33

Classified By: Ambassador Barbara Stephenson for reasons 1.4 (b) and (d)

SUMMARY

¶1. (C) The GOP planned to offer legal immigrant status to individuals living in the Darien region under Temporary Humanitarian Protection (THP) status, said MFA DG of Exterior Policy Javier Bonagas told POLOFF on February 20. The official census of THP persons taken in 2004 counted 542 Colombians under THP, along with 284 Panamanian family members. According to Bonagas, the numbers of persons living under the THP regime had fallen dramatically. The draft legislation should be considered in the National Assembly in late March or April. There were no plans to extend permanent status to any other groups. The indigenous families living in Alta Playona who were recently denied refugee status for the second time would not be part of this group and would not be affected by the proposed legislation.

¶2. (C) The status and conditions of the persons living under THP and their families has been a major preoccupation for NGOs and the international community for some time. Plans to normalize their status will be welcome news in the international community if Bonagas' plans come to fruition. In a wide-ranging series of interviews with representatives of the United Nations High Commission on Refugees (UNHCR), the Norwegian Refugee Council, the International Organization for Migration, the National Office for the Attention of Refugees (ONPAR), the Jesuit Service for Refugees, the American Red Cross and the People's Legal Assistance Center's Program for Refugees, POLOFF heard echoed from each group shared concerns about the precarious legal and security situation of the persons living under THP in the remote Darien region of Panama.

Temporary Protection Regime

¶3. (U) The "Temporary Humanitarian Protection" (THP) regime was created in 1998 by Executive Decree 23 to address influxes of persons who had crossed the border from Colombia seeking refuge from the internal conflicts in that country. The same decree also created the National Office for the Attention of Refugees (ONPAR), the government agency with the responsibility for carrying out government policy related to refugees as well as persons under THP. Under the THP regime, groups of individuals are given temporary humanitarian leave to live in Panama for a period of two months without permission to work or attend school. In practice, the two-month limit has never been enforced, as many persons under THP have lived in the Darien for nearly 10 years.

¶4. (C) Panamanian law clearly states that beneficiaries of

THP status do not/not have "the same rights and benefits given to refugees under international conventions." Furthermore, the THP law does not specifically authorize protected individuals to legally work, attend school, or travel without the express permission of a GOP representative. The primary concern of NGOs is the lack of mobility for individuals under THP, according to Osiris Abrego of the Jesuit Service for Refugees. As they cannot legally work, most persons under THP work illegally as fishermen or seasonal agriculture workers. Some women work as artisans, creating indigenous handicrafts. To fill in the gaps, they receive food aid from UNHCR, IOM and other organizations what also run projects providing safe drinking water, gas stoves and medical supplies as well as constructing emergency shelters and providing transportation to Panama City to process THP paperwork.

Who and Where?

15. (C) According to an official census taken under the auspices of ONPAR and Colombian officials in June of 2004, 542 Colombians live under the THP regime in the Darien with their 284 Panamanian family members, for a total of 826 individuals and 198 families. These families live in the communities of La Palma (7 families), Yaviza (20 families), Puerto Obaldia (27 families), El Real (4 families), Yape (15 families), Boca de Cupe (47 families) and Jaque (78 families). The ethnic background of the individuals is primarily indigenous and Afro-Colombian (concentrated in Central Darien near Yaviza and Boca de Cupe). A new census was undertaken in November and December of 2008 by ONPAR. Although the results of the census have not yet been released, Plutarco Pedreschi, interim Director of ONPAR reported to POLOFF on January 15 that the numbers of persons under THP had gone down significantly in all parts of the Darien. The Colombians under THP in Puerto Obaldia are now 32 (81 in 2004); in Jaque now there are 121 Colombians registered under THP (214 in 2004), and in the Yaviza/El Real/Yape/Boca de Cupe region, where there were once 238 Colombians, there are now 202.

16. (C) Jean-Philippe Antolin of IOM expressed skepticism of these numbers, claiming that ONPAR "would not open its eyes" to more recently-arrived Colombians needing international protection, and probably "did not look too hard" to find all of the Colombians listed in the 2004 census. IOM, along with others such as Merete Hanson of the Norwegian Refugee Council, also expected that some Colombians had returned home to Colombia, or left their town of registration to seek employment opportunities elsewhere in Panama. "There are at least 200 more recently arrived Colombians scattered throughout these settlements," said Jose Euceda of UNHCR. Euceda concurred with the opinion that the GOP was not making much effort to locate illegal Colombians in the Darien, whether needing protection or not.

17. (C) All persons under THP living in the Darien now have Panamanian identification cards, according to Pedreschi of ONPAR. Until recently, persons under THP were not given identification by the GOP, leading to harassment by local police, said Antolin of IOM. ONPAR had maintained for years that persons under THP should carry their Colombian identification cards and had no right to or need for Panamanian identification. However, during the 2008 census, efforts were made to provide identification cards to all persons under THP. Further, NGOs have long reported that many Panamanian children born to THP persons were not given birth certificates by local officials. This has also been corrected, according to Pedreschi of ONPAR, as part of the November-December 2008 census. All NGOs and international organizations interviewed greeted this news, of the ID cards and birth certificates, with some skepticism.

Immigrant Status for persons under THP

¶8. (C) A draft law is currently being circulated among government agencies by Javier Bonagas, Director General of Exterior Policy of the Ministry of Foreign Affairs, that would change the status of the Colombians from Temporary Humanitarian Protection (THP) to legal immigrants. The administration and oversight of the individual cases would be transferred from the National Office for the Attention of Refugees (ONPAR) to the Migration Directorate, which is part of the Ministry of Government and Justice (MOGJ) said Bonagas in a February 20 interview. Bonagas noted that many of the persons under THP could be admitted as permanent residents as spouses or children of Panamanian citizens, and said that the others could be admitted under "a humanitarian provision." The Migration Law (Law 3 of February 22, 2008) and the implementing regulations (Executive Decree 320 of August 8, 2008) do not currently allow persons, other than those accepted as refugees, to apply for permanent residency for humanitarian reasons. Under the regime proposed by Bonagas, the individuals would be given the same rights to work, move within the country and attend school as legal immigrants.

¶9. (C) Bonagas did not foresee any problems securing National Assembly support for the draft legislation in late March or early April. Bonagas claimed also to be the author of Law 25, which was approved by the National Assembly in May 2008, created a one-time process through which individuals who had been in refugee status for more than ten years could apply for permanent residency. This legislation will benefit an estimated 733 persons, according to Pedreshi of ONPAR, most of whom are from Ecuador, Nicaragua, El Salvador and Guatemala, as well as some African nations.

¶10. (C) COMMENT: The MFA and the MOGJ are the primary players in the debate over the status of persons under THP. Although POLOFF first learned of Bonagas' draft legislation from Plutarco Pedreshi of ONPAR, Pedreshi acknowledged that his office was an implementer only and would receive its marching orders from the Foreign Ministry (MFA). Euceda of UNHCR has also said that any changes to the status of these individuals would need to come from the MFA, with the concurrence of MOGJ. END COMMENT.

Life in the Darien - Tough for THP

¶11. (C) All NGOs and international organizations interviewed expressed great concern for the safety and well-being of individuals living under THP in the Darien. The general dearth of GOP presence for all Darien residents is evident in the poor quality of health and education facilities and lack of safety and security provided. This situation negatively affects those living under THP even more than Panamanian citizens as THPs require government permission to travel outside of their village of registration, asserted Jean-Philippe Antolin of IOM and echoed by every other NGO and international organization providing services in the Darien. To receive permission to travel, most persons must petition one of the three ONPAR regional offices, located in El Real, Boca de Cupe and Jaque. Jose Euceda of UNHCR noted that he has encouraged ONPAR to open a regional office in Puerto Obaldia, a major transit area located on the Caribbean coast directly on the border with Colombia, to no avail. Although persons under THP living near Puerto Obaldia (120 total, according to the 2004 census) are supposed to travel overland El Real to receive permission to travel, they can also receive it by visiting the local police station.

¶12. (C) Local health centers can be found in Yaviza, El Real, Jaque, Boca de Cupe and Obaldia. Persons under THP have no right to GOP-funded health services, but often receive them if local health officials are willing to provide them. For advanced treatment, persons under THP must receive permission to travel from local officials, but NGOs report that they often cannot afford the gasoline needed to transport them to locations where treatment is available. Further, Antolin of IOM reported that public health services were repeatedly shut down in Jaque in 2007 and 2008 due to

threats from the FARC.

¶13. (C) All Darien residents, including those under THP, suffer from the general lack of public secondary education. Education beyond sixth grade can only be found in the larger towns, such as Jaque, Yaviza and Puerto Obaldia. In order to attend, children must board - at their parents' expense - in the larger cities.

Safety - a central concern

¶14. (C) A Colombian citizen living under THP in the town of Boca de Cupe was murdered by guerillas from the FARC's 57th Front on February 18, according to Claudio Delfabro of UNHCR and press reports. Three guerillas reportedly killed Aureliano Sepulveda, who had been living in Boca de Cupe since 1996 and was described by Delfabro of UNHCR as a prominent community leader of the THP population in that village.

¶15. (C) The quality and quantity of police presence was generally considered by the NGOs to be negligible to non-existent, a matter of significant concern not only for THP beneficiaries but for Panamanians in general in the region. The persons living under THP, like other Darien residents, have no expectation that the National Police will protect them from the FARC, according to Antolin of IOM. Most interaction with the police comes in the form of harassment, according to Roberto Briton of the American Red Cross, because most persons living under THP, until recently, did not have Panamanian-produced identification cards and the police officers, most of whom come from the interior of the country, have prejudice against Colombians. "They hate the FARC, but what are they going to do?" asked Briton. "They have to get along somehow."

¶16. (C) IOM, in conjunction with NRC, has established a "web of community monitors" in three different Darien communities who are in contact with IOM staff member Eduardo Silgado approximately every 10 days in order to keep tabs on large influxes of individuals and internal displacement events. This network has also reported the movement of armed elements that caused the international displacement of 200-400 indigenous Panamanians (Reftel A). This pilot project is currently operating with only Silgado of IOM as the point of contact.

No help planned for Embera families

¶17. (C) Sixty-two individuals (10 families), of the Embera-Wounaan indigenous group who have been living in Alta Playona since 2005 were denied refugee status for the second time in October 2008 by Panama's National Eligibility Commission, an inter-agency Committee which formally extends refugee status on the recommendation of ONPAR. According to Jean-Philippe Antolin of IOM, the leader of these indigenous families had come into conflict with a FARC leader in the Choco district of Colombia. As a result, their leader was murdered and several group members were locked in a church and burned to death. The remaining members fled via the Bohaya river and found their way to Alta Playona. Originally, twelve families arrived in Alta Playona, but two families have since returned to Colombia or disappeared into Panama, according to UNHCR's Euceda. The results have not yet been publicly disclosed.

¶18. (C) The GOP has no plans to offer refugee or other special status to this group, according to Bonagas. "They are not refugees, but economic migrants," said Bonagas, who noted that these indigenous groups with representation in Panama and Colombia have always traveled freely between the two countries with little regard for international borders. He continued by noting "Some international groups do not think we take enough refugees and went out looking" for a

group to represent their cause. He continued by stating "They are not refugees and will not get refugee status." (COMMENT: Bonagas did not name UNHCR but clearly implied that he thought that UNHCR had sought out this sympathetic group in an effort to put on a face on Panama's perceived hostility to refugees, and convinced the 10 families to apply for refugee status. In prior interviews, UNHCR representatives Euceda and Delfabro have told POLOFF that they were the first to tell the Embera of Alta Playona of their potential status as refugees fleeing political violence. END COMMENT)

Ongoing Concerns with Refugee Process

¶19. (C) Even if the Colombians living under THP do receive permanent status in Panama, concerns about the refugee recognition process in Panama will remain. ONPAR is universally described as slow, bureaucratic and opaque by international organizations and NGOs that work with refugee candidates. Individuals seeking refugee status must first undergo an "administrative review" process in which an ONPAR employee reviews their application. Between 50%-90% of the applications are refused at this time, according to NGOs working with refugee applicants. All organizations interviewed agree that a substantial number of applications are rejected during this initial administrative review, although they concede that it is impossible to know the exact number. ONPAR claims not to keep data on the number of applications rejected during this review process, and Pedreshi of ONPAR claims that the process weeds out "clearly ineligible" applicants that "do not meet the definition of refugee" under Panamanian law. There is no requirement that a reason be given for this refusal, and rejected applicants had only the option to appeal to the same staff who had heard their initial request.

¶20. (U) Applicants who pass the initial screening have their applications reviewed by the National Commission for the Protection of Refugees, or National Eligibility Commission (NEC) which votes on official recognition of an applicant's claim. The Committee, whose membership includes the below listed individuals, approves or denies applications upon recommendations of ONPAR staff.

Voting Members:

Vice Minister, Ministry of Government and Justice
Vice Minister, Ministry of Foreign Affairs
Vice Minister for Work, Ministry of Labor
Director of Migration, Ministry of Government and Justice
Director General of External Policy, Ministry of Foreign Affairs
Director General of Employment, Ministry of Labor
Executive Director of the Panamanian Red Cross
Representative of the National Police

Observing Members with speaking rights:

Regional Representative of UNHCR
Director of ONPAR
Director General of International Organizations, Ministry of Foreign Affairs

¶21. (U) If denied by the Commission, applicants have 5 days to appeal back to the Commission. Further appeals can be made to the Minister of Government and Justice and finally to the courts, although post is not aware of any denied case ever using the final two options. The Commission, by law, must meet every three months, but in practice meets less often, having met only twice in 2008. The deliberations of the Commission are not open to the public.

¶22. (C) UNHCR criticizes the extremely small number of refugees admitted by ONPAR. Currently, approximately 1000 people have official refugee status in Panama. Pedreshi of ONPAR reported to POLOFF that ONPAR accepts (after the initial screening process) 200-300 individual applications per year. According to UNHCR, an observing member of the

NEC, the final tally for 2008 was as follows:

March NEC Meeting

Cases considered - 20 (99 people)
Recognized - 2 cases (11 people)
Denied - 16 cases (79 people)
More information requested - 2 cases (9 people)

October NEC Meeting

Cases considered - 20 (94 people)
Recognized - 5 cases (23 people)
Denied - 13 cases (65 people)
More information requested - 2 cases (6 people)

COMMENT

123. (C) The involvement of Bonagas indicates that the GOP is taking seriously efforts to normalize the status of the Colombians living under THP in the Darien. Bonagas seemed confident that the National Assembly would easily pass his plan, despite the upcoming May 3 elections and election-year sensitivities about "criminal Colombians." Indeed, Law 25, which was drafted by Bonagas and gave permanent resident status to more than 700 persons who have held the status of refugee for more than 10 years, was passed into law with little public comment. However, the results of ONPAR's census of November-December 2008 have yet to be released, and it remains to be seen whether the drop in numbers of Colombians living under THP is a result of individuals choosing to return to Colombia or because ONPAR is willfully not seeking them out to be counted. Any normalization efforts that go forward will account only for individuals listed in the official ONPAR census of 2008. NGOs and international organizations involved in this issue seem to agree that any action the GOP might take would be in the interest of removing an irritating thorn from their side and turning unwanted international attention away from refugees and the Darien.

STEPHENSON